

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE)	
INTEL CORP. MICROPROCESSOR)	
ANTITRUST LITIGATION)	MDL No. 05-1717-JJF
)	
)	
PHIL PAUL, <i>on behalf of himself</i>)	
<i>and all others similarly situated,</i>)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 05-485-JJF
)	
INTEL CORPORATION,)	CONSOLIDATED ACTION
)	
Defendant.)	
)	

**NOTICE OF CLASS PLAINTIFFS' RESPONSE TO
DEFENDANT INTEL CORPORATION'S SUPPLEMENTAL FILING**

Intel’s reliance on *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007), is misplaced. That case addressed “the proper standard for pleading an antitrust conspiracy” *Id.* at 1963; *see also id.* at 1964 (“This case presents the . . . question of what a plaintiff must plead in order to state a claim under § 1 of the Sherman Act.”). It provides no guidance here in determining the adequacy of Class Plaintiffs’ complaint, which alleges that Intel engaged in unlawful monopolization, not an antitrust conspiracy.¹

¹ To be sure, Intel's anticompetitive conduct included agreements with customers and standards-setting bodies that enabled Intel to maintain monopoly power and charge supra-competitive prices in the x86 microprocessor market. *See* FACC ¶¶ 249-51, D.I. 108 in 05-MD-1717. But the complaint pleads these agreements in detail, *see id.* ¶¶ 140-225, and Intel's motion does not argue otherwise. Indeed, as to some of these agreements – those with the five major Japanese OEMs – Intel did not contest the Japan Fair Trade Commission's findings that the agreements existed and violated Japan's Antimonopoly Act. *See id.* ¶¶ 145-49. In contrast, the complaint in

In deciding whether Class Plaintiffs' complaint sufficiently pleads a monopolization claim, this Court should look not to *Twombly* but to cases such as *Brader v. Allegheny Gen. Hosp.*, 64 F.3d 869 (3d Cir. 1995). Intel's challenge to Class Plaintiffs' monopolization claim targets their allegations regarding antitrust injury and standing to sue. On this issue, the Third Circuit Court of Appeals has stated that "the existence of an 'antitrust injury' is not typically resolved through motions to dismiss." *Id.* at 876. As Class Plaintiffs explained in their opposition brief, determining whether consumers in fact paid higher prices than they would have paid but for Intel's unlawful conduct requires expert analysis, supporting data, and other evidence. *See* Opp. at 13. At this stage, it is sufficient that the FACC alleges such higher prices, *see* FACC ¶ 234, which – taken as true – clearly establishes antitrust injury to Class Plaintiffs. *See Allegheny Gen. Hosp. v. Philip Morris, Inc.*, 228 F.3d 429, 439 (3d Cir. 2000).²

The Court should deny Intel's motion to dismiss for the reasons stated in Class Plaintiffs' opposition. As discussed above, *Twombly* does not dictate otherwise.

Twombly did "not set forth a single fact in a context that suggests an agreement." 127 S. Ct. at 1969.

² Insofar as *Twombly* is premised on the fact that "proceeding to antitrust discovery can be expensive," 127 S. Ct. at 1967, it bears noting that discovery will continue – and will be expensive – with or without Class Plaintiffs, given the existence of AMD's own case against Intel.

Dated: June 4, 2007

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I, J. Clayton Athey, hereby certify that on this 4th day of June, 2007, I caused the foregoing **Notice of Class Plaintiffs' Response to Defendant Intel Corporation's Supplemental Filing** to be served on the following counsel via electronic filing:

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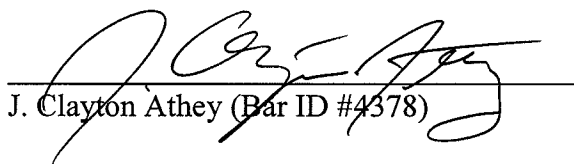
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